

TO: The Solid Waste Management Board

FROM: Ann S. Long
Attorney, Office of Legal Counsel

SUBJECT: Recall and Readoption of LSA Document # 07-468(F)

DATE: October 26, 2009

Factual Background

The department has recalled a rule amending 329 IAC 9 regarding delivery prohibition of regulated substances to underground storage tanks that was final adopted by this board on July 15, 2008. A formal notice of recall was published in the Indiana Register on September 16, 2009.

Under IC 4-22-2-40 (a), a rule may be recalled at any time before the rule is accepted for filing by the Legislative Services Agency. A board may reconsider its adoption action and adopt either an identical rule or a revised rule (IC 4-22-2-40(c)).

Reasons for Recall

A citation in the final adopted rule inaccurately described the basis through which a red tag affixed under the rule could be appealed. The appeal procedure for such a determination by IDEM is already contained in statute and is not a necessary part of the rule. Therefore IDEM has eliminated the section (329 IAC 9-4.5-4) in the rule as proposed for readoption.

Board Action

Under IC 4-22-2-40, the board may readopt a rule after the agency recalls it. The board may adopt either the identical rule or a revised rule. The rule will be submitted to the Attorney General's Office and the Governor's Office for approval and then published as a final rule in the Indiana Register. The department requests that the board adopt amendments to the rule as it was final adopted and then readopt the rule as amended.